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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TRAVIS HAYWARD, on behalf of himself,
and others similarly situated,

Case No. 17 CV 2944

Plaintiff,

COMPLAINT

-against-

IBI ARMORED SERVICES, INC., and
MICHAEL SHIELDS,

ECF Case

Defendants.

Plaintiff, Travis Hayward (“Plaintiff”), on behalf of himself and other similarly situated employees, by and through his undersigned attorneys, Cilenti & Cooper, PLLC, files this Complaint against Defendants, IBI Armored Services, Inc., (hereinafter, “IBI Armored Services”) and Michael Shields (collectively, “Defendants”), and states as follows:

INTRODUCTION

1. Plaintiff, Travis Hayward, alleges that, pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §§ 201, *et seq.* (“FLSA”), he is entitled to recover from the Defendants: (1) unpaid wages for hours worked; (2) unpaid overtime

compensation; (3) liquidated damages; (4) prejudgment and post-judgment interest; and (5) attorneys' fees and costs.

2. Plaintiff, Travis Harward, further alleges that, pursuant to the New York Labor Law, he is entitled to recover from the Defendants: (1) unpaid wages for hours worked; (2) unpaid overtime compensation; (3) unpaid "spread of hours" premium for each day he worked ten (10) or more hours; (4) liquidated damages and statutory penalties pursuant to the New York Wage Theft Prevention Act; (5) prejudgment and post-judgment interest; and (6) attorneys' fees and costs.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this controversy pursuant to 29 U.S.C. §216(b), 28 U.S.C. §§ 1331, 1337 and 1343, and has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper in the Eastern District pursuant to 28 U.S.C. § 1391 because the conduct making up the basis of the complaint took place in this judicial district.

PARTIES

5. Plaintiff is an adult resident of Bronx County, New York.

6. Defendant, IBI Armored Services, is a business corporation existing and doing business under the laws of the State of New York, with a principal place of business at 37-06 61st Street, Woodside, New York 11377.

7. Upon information and belief, Defendant, Michael Shields, is the owner, officer, director and/or managing agent of IBI Armored Services, whose address is unknown at this time and who participated in the day-to-day operations of IBI Armored

Services and acted intentionally and maliciously and is an “employer” pursuant to the FLSA, 29 U.S.A §203(d) and Regulations promulgated thereunder, 29 C.F.R. § 791.2, as well as New York Labor Law § 2 and the Regulations thereunder, and is jointly and severally liable with IBI Armored Services.

8. Plaintiff, Travis Hayward, has been employed by Defendants in Queens County, New York, as a driver for Defendants’ armored car service known as “IBI Armored Services” from June 2014 through the present.

9. At all relevant times, IBI Armored Services was, and continues to be, an “enterprise engaged in commerce” within the meaning of the FLSA.

10. At all relevant times, the work performed by Plaintiff, Travis Hayward, was and is directly essential to the business operated by IBI Armored Services.

11. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff Travis Hayward lawfully earned wages for hours worked, in contravention of the FLSA and New York Labor Law.

12. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff Travis Hayward lawfully earned overtime wages in contravention of the FLSA and New York Labor Law.

13. At all relevant times, Defendants knowingly and willfully failed to pay Plaintiff Travis Hayward lawfully earned “spread of hours” premiums in contravention of the New York Labor Law.

14. Plaintiff, IBI Armored Services, has fulfilled all conditions precedent to the institution of this action and/or such conditions have been waived.

STATEMENT OF FACTS

15. In June 2014, Plaintiff, Travis Hayward, was hired by Defendants to work as a driver for Defendants' armored vehicle service known as "IBI Armored Services", located at 37-06 61st Street, Woodside, New York 11377.

16. Plaintiff, Travis Hayward, has worked continuously for the Defendants from June 2014 through the present.

17. Plaintiff's duties are to transport money from grocery stores and banks in the Bronx. His route has been and is within the City of New York.

18. During the past three (3) years of Plaintiff's employment by Defendants, he worked well over forty (40) hours per week. Plaintiff generally worked up to twelve (12) hours per shift, and he worked six (6) or seven (7) shifts per week. Since February 2017, plaintiff's hours has been reduced to one (1) or two (2) shifts per week.

19. Plaintiff was not paid wages for all hours worked, or overtime wages. Plaintiff was paid a regular rate of \$11.00 per hour in 2014 and was raised to \$12.00 per hour in approximately March 2015, and he worked more than sixty (60) hours per week. Work performed above forty (40) hours per week was not paid at time and one-half the statutory minimum rate of pay as required by state and federal law.

20. By shaving time and rounding, Defendants knowingly and willfully operated and continue to operate their business with a policy of not paying either the FLSA minimum wage or the New York State minimum wage to the Plaintiff and other similarly situated employees, for some hours they worked.

21. Defendants knowingly and willfully operated their business with a policy of not paying Plaintiff and other similarly situated employees either the FLSA overtime

rate (of time and one-half), or the New York State overtime rate (of time and one-half), in direct violation of the FLSA and New York Labor Law and the supporting federal and New York State Department of Labor Regulations, improperly classifying Plaintiff and others similarly situated as exempt from overtime compensation.

22. Defendants knowingly and willfully operated their business with a policy of not paying the New York State “spread of hours” premium to Plaintiff and other similarly situated employees.

23. At all relevant times, upon information and belief, and during the course of Plaintiff’s employment, the Defendants failed to maintain accurate and sufficient time records.

24. Defendant, Michael Shields, is an individual who, upon information and belief, owns the stock of IBI Armored Services, owns IBI Armored Services, and manages and makes all business decisions, including but not limited to, the decisions of what salary the employees will receive and the number of hours the employees will work.

COLLECTIVE ACTION ALLEGATIONS

25. Plaintiff brings this action individually and as representative on behalf of all other current and former non-exempt employees who have been or were employed by the Defendants since May 2014 to the entry of judgment in this case (the “Collective Action Period”), and who were compensated at rates less than the statutory minimum wage for some hours worked, and less than the statutory rate of time and one-half the minimum wage, for all hours worked in excess of forty (40) hours per workweek (the “Collective Action Members”).

26. The collective action class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, and the facts upon which the calculation of that number are presently within the sole control of the Defendants, upon information and belief, there are hundreds of Collective Action Members who worked for the Defendants during the Collective Action Period, most of whom would not be likely to file individual suits because they lack adequate financial resources, access to attorneys, or knowledge of their claims. Therefore, Plaintiff submits that this matter should be certified as a collective action under the FLSA, 29 U.S.C. § 216(b).

27. Plaintiff will fairly and adequately protect the interests of the Collective Action Members and has retained counsel that is experienced and competent in the fields of employment law and class action litigation. Plaintiff has no interests that are contrary to or in conflict with those members of this collective action.

28. This action should be certified as a collective action because the prosecution of separate actions by individual members of the class would create a risk of either inconsistent or varying adjudications with respect to individual members of the class, or adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudication, or substantially impair or impede their ability to protect their interests.

29. A collective action is superior to other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable. Furthermore, inasmuch as the damages suffered by individual Collective Action Members may be relatively small, the expense and burden of individual litigation make it

virtually impossible for the members of the collective action to individually seek redress for the wrongs done to them. There will be no difficulty in the management of this action as a collective action.

30. Questions of law and fact common to the members of the collective action predominate over questions that may affect only individual members because Defendants have acted on grounds generally applicable to all members. Among the common questions of law and fact common to Plaintiff and other Collective Action Members are:

- a. Whether the Defendants employed Plaintiff and the Collective Action Members within the meaning of the FLSA;
- b. Whether the Defendants failed to keep true and accurate wage and hour records for all hours worked by Plaintiff and the Collective Action Members;
- c. What proof of hours worked is sufficient where the employer fails in its duty to maintain wage and hour records;
- d. Whether the Defendants failed to pay Plaintiff and the Collective Action Members statutory minimum wages, in violation of the FLSA and the regulations promulgated thereunder;
- e. Whether the Defendants failed to pay Plaintiff and the Collective Action Members overtime compensation for all hours worked in excess of forty (40) hours per workweek, in violation of the FLSA and the regulations promulgated thereunder;
- f. Whether the Defendants' violations of the FLSA are willful as that term is used within the context of the FLSA; and,

g. Whether the Defendants are liable for all damages claimed hereunder, including but not limited to compensatory, liquidated and statutory damages, interest, costs and disbursements, and attorneys' fees.

31. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a collective action.

32. Plaintiff and others similarly situated have been substantially damaged by the Defendants' wrongful conduct.

STATEMENT OF CLAIM

COUNT I

[Violation of the Fair Labor Standards Act]

33. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "32" of this Complaint as if fully set forth herein.

34. At all relevant times, upon information and belief, Defendants were and continue to be an employer engaged in interstate commerce and/or the production of goods for commerce within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a). Further, Plaintiff is a covered individual within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

35. At all relevant times, Defendants employed Plaintiff within the meaning of the FLSA.

36. Upon information and belief, at all relevant times, Defendants have had gross revenues in excess of \$500,000.

37. Plaintiff, Travis Hayward, worked hours for which he was not paid the statutory minimum wage.

38. At all relevant times, Defendants had a policy and practice of refusing to pay the statutory minimum wage to Plaintiff for some hours worked.

39. Defendants failed to pay Plaintiff minimum wages in the lawful amount for all hours worked.

40. Plaintiff, Travis Hayward, was entitled to be paid at the rate of time and one-half the statutory minimum for all hours worked in excess of the maximum hours provided for in the FLSA.

41. Defendants failed to pay Plaintiff overtime compensation in the lawful amount for all hours worked in excess of the maximum hours provided for in the FLSA.

42. At all relevant times, Defendants had, and continues to have a policy and practice of refusing to pay overtime compensation at the statutory rate of time and one-half to Plaintiff for all hours worked in excess of forty (40) hours per work week, which violated and continues to violate the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

43. Defendants knowingly and willfully disregarded the provisions of the FLSA as evidenced by their failure to compensate Plaintiff at the statutory minimum wage rate and the statutory overtime rate of time and one-half for all hours worked in excess of forty (40) hours per week, when they knew or should have known such was due and that non-payment of minimum wages and overtime pay would financially injure Plaintiff.

44. As a result of Defendants' failure to properly record, report, credit and/or compensate its employees, including Plaintiff, the Defendants have failed to make, keep and preserve records with respect to each of its employees sufficient to determine the

wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.A. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

45. Records, if any, concerning the number of hours worked by Plaintiff and the actual compensation paid to Plaintiff are in the possession and custody of the Defendants. Plaintiff intends to obtain these records by appropriate discovery proceedings to be taken promptly in this case and, if necessary, will then seek leave of Court to amend this Complaint to set forth the precise amount due.

46. Defendants failed to properly disclose or apprise Plaintiff, Travis Hayward, of his rights under the FLSA.

47. As a direct and proximate result of Defendants' willful disregard of the FLSA, Plaintiff is entitled to liquidated damages pursuant to the FLSA.

48. Due to the intentional, willful and unlawful acts of the Defendants, Plaintiff suffered damages in an amount not presently ascertainable of unpaid minimum wages and overtime compensation, an equal amount as liquidated damages, and prejudgment interest thereon.

49. Plaintiff is entitled to an award of his reasonable attorneys' fees, costs and expenses, pursuant to 29 U.S.C. § 216(b).

COUNT II
[Violation of the New York Labor Law]

50. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "49" of this Complaint as if fully set forth herein.

51. At all relevant times, Plaintiff was employed by Defendants within the meaning of New York Labor Law §§ 2 and 651.

52. Defendants knowingly and willfully violated Plaintiff's rights by failing to pay Plaintiff minimum wages in the lawful amount for hours worked.

53. Defendants knowingly and willfully violated Plaintiff's rights by failing to pay Plaintiff overtime compensation at rates of not less than one and one-half times the statutory minimum rate of pay for each hour worked in excess of forty (40) hours in a workweek.

54. Defendants knowingly and willfully violated Plaintiff's rights by failing to pay "spread of hours" premium to Plaintiff for each day he worked ten (10) or more hours pursuant to New York State Department of Labor Regulations §§137-1.7; 142-2.4.

55. Defendants willfully disregarded and purposefully evaded record keeping requirements of the New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

56. Due to the Defendants' New York Labor Law violations, Plaintiff is entitled to recover from Defendants his unpaid minimum wages, unpaid overtime wages, unpaid "spread of hours" premium, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to New York Labor Law § 663(1) *et al.* and § 198. Plaintiff also seeks liquidated damages pursuant to New York Labor Law § 663(1).

COUNT III

[Statutory Penalties Pursuant to the New York State Wage Theft Prevention Act]

57. Plaintiff re-alleges and re-avers each and every allegation and statement contained in paragraphs "1" through "56" of this Complaint as if fully set forth herein.

58. The New York State Wage Theft Prevention Act requires every employer to notify its employees, in writing, among other things, of the employee's rate of pay and regular pay day.

59. The New York State Wage Theft Prevention Act requires every employer to notify its employees, in writing, with every payment of wages, of the dates of work covered, the rate of pay and basis thereof, hours worked, gross wages, deductions, allowances, and net wages.

60. Defendants did not provide Plaintiff, with statements accurately accounting for his actual hours worked, and setting forth his hourly rate of pay, regular wage, and overtime wages.

61. Upon information and belief, this was done to disguise the actual number of hours Plaintiff worked, and to avoid paying him for his full hours worked; and, overtime due.

62. Defendants willfully disregarded and purposefully evaded record keeping requirements of the New York Labor Law by failing to maintain accurate and complete timesheets and payroll records.

63. Plaintiff was not provided with true and accurate wage notice and statements as required by law.

64. Defendants failed to comply with the notice and record keeping requirements of the New York State Wage Theft Prevention Act, and as such, are liable for civil penalties, attorneys' fees, and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Travis Hayward, on behalf of himself and all similarly situated employees, respectfully requests that this Court grant the following relief:

- (a) A declaratory judgment that the practices complained of herein are unlawful under the FLSA and New York Labor Law;

- (b) An injunction against IBI Armored Services, Inc. and its officers, agents, successors, employees, representatives and any and all persons acting in concert with it as provided by law, from engaging in each of the unlawful practices and policies set forth herein;
- (c) An award of unpaid minimum wages due under the FLSA and New York Labor Law;
- (d) An award of unpaid overtime wages due under the FLSA and New York Labor Law;
- (e) An award of unpaid “spread of hours” premium due under the New York Labor Law;
- (f) An award of liquidated and/or punitive damages as a result of Defendants’ knowing and willful failure to pay minimum wages and overtime compensation pursuant to 29 U.S.C. § 216;
- (g) An award of liquidated and/or punitive damages as a result of Defendants’ willful failure to pay minimum wages, overtime compensation, and “spread of hours” premium pursuant to the New York Labor Law;
- (h) An award of prejudgment and post-judgment interest;
- (i) An award of costs and expenses associated with this action, together with reasonable attorneys’ fees; and,
- (j) Such other and further relief as this Court determines to be just and proper.

Dated: New York, New York
May 15, 2017

Respectfully submitted,

CILENTI & COOPER, PLLC

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By:



Peter H. Cooper (PHC 4714)

**CONSENT TO SUE UNDER
FAIR LABOR STANDARDS ACT**

I, Travis Hayward, am an employee currently or
formerly employed by IBI Armored Services, and/or related
entities. I consent to be a plaintiff in the above-captioned action to collect unpaid wages.

Dated: New York, New York
May 9, 2017

A handwritten signature in black ink, appearing to read "Travis Hayward", written over a horizontal line.